

102D CONGRESS  
2D SESSION

# S. 2969

To protect the free exercise of religion.

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## IN THE SENATE OF THE UNITED STATES

JULY 2 (legislative day, JUNE 16), 1992

Mr. KENNEDY (for himself, Mr. HATCH, Mr. METZENBAUM, Mr. GARN, Mr. ADAMS, Mr. HATFIELD, Mr. BURDICK, Mrs. KASSEBAUM, Mr. GRAHAM, Mr. PACKWOOD, Mr. HARKIN, Mr. SPECTER, Mr. INOUE, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. PELL, Mr. RIEGLE, Mr. WELLSTONE, and Mr. WIRTH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect the free exercise of religion.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Religious Freedom  
5       Restoration Act of 1992”.

6       **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**  
7       **PURPOSES.**

8       (a) FINDINGS.—The Congress finds that—

9               (1) the framers of the Constitution, recognizing  
10       free exercise of religion as an unalienable right, se-

1 cured its protection in the First Amendment to the  
2 Constitution;

3 (2) laws “neutral” toward religion may burden  
4 religious exercise as surely as laws intended to inter-  
5 fere with religious exercise;

6 (3) governments should not burden religious ex-  
7 ercise without compelling justification;

8 (4) in *Employment Division v. Smith*, 494 U.S.  
9 872 (1990) the Supreme Court virtually eliminated  
10 the requirement that the government justify burdens  
11 on religious exercise imposed by laws neutral toward  
12 religion; and

13 (5) the compelling interest test as set forth in  
14 *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wis-*  
15 *consin v. Yoder*, 406 U.S. 205 (1972) is a workable  
16 test for striking sensible balances between religious  
17 liberty and competing governmental interests.

18 (b) PURPOSES.—The purposes of this Act are—

19 (1) to restore the compelling interest test as set  
20 forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*  
21 and to guarantee its application in all cases where  
22 free exercise of religion is burdened; and

23 (2) to provide a claim or defense to persons  
24 whose religious exercise is burdened by government.

1 **SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.**

2 (a) **IN GENERAL.**—Government shall not burden a  
3 person’s exercise of religion even if the burden results  
4 from a rule of general applicability, except as provided in  
5 subsection (b).

6 (b) **EXCEPTION.**—Government may burden a per-  
7 son’s exercise of religion only if it demonstrates that appli-  
8 cation of the burden to the person—

9 (1) is essential to further a compelling govern-  
10 mental interest; and

11 (2) is the least restrictive means of furthering  
12 that compelling governmental interest.

13 (c) **JUDICIAL RELIEF.**—A person whose religious ex-  
14 ercise has been burdened in violation of this section may  
15 assert that violation as a claim or defense in a judicial  
16 proceeding and obtain appropriate relief against a govern-  
17 ment. Standing to assert a claim or defense under this  
18 section shall be governed by the general rules of standing  
19 under article III of the Constitution.

20 **SEC. 4. ATTORNEYS FEES.**

21 (a) **JUDICIAL PROCEEDINGS.**—Section 722 of the Re-  
22 vised Statutes (42 U.S.C. 1988) is amended by inserting  
23 “the Religious Freedom Restoration Act of 1992,” before  
24 “or title VI of the Civil Rights Act of 1964”.

25 (b) **ADMINISTRATIVE PROCEEDINGS.**—Section  
26 504(b)(1)(C) of title 5, United States Code, is amended—

1 (1) by striking “and” at the end of clause (ii);

2 (2) by striking the semicolon at the end of  
3 clause (iii) and inserting “, and”; and

4 (3) by inserting “(iv) the Religious Freedom  
5 Restoration Act of 1992;” after clause (iii).

6 **SEC. 5. DEFINITIONS.**

7 As used in this Act—

8 (1) the term “government” includes a branch,  
9 department, agency, instrumentality, and official (or  
10 other person acting under color of law) of the Unit-  
11 ed States, a State, or a subdivision of a State;

12 (2) the term “State” includes the District of  
13 Columbia, the Commonwealth of Puerto Rico, and  
14 each territory and possession of the United States;  
15 and

16 (3) the term “demonstrates” means meets the  
17 burdens of going forward with the evidence and of  
18 persuasion.

19 **SEC. 6. APPLICABILITY.**

20 (a) **IN GENERAL.**—This Act applies to all Federal  
21 and State law, and the implementation of that law, wheth-  
22 er statutory or otherwise, and whether adopted before or  
23 after the enactment of this Act.

24 (b) **RULE OF CONSTRUCTION.**—Federal law adopted  
25 after the date of the enactment of this Act is subject to

1 this Act unless such law explicitly excludes such applica-  
2 tion by reference to this Act.

3 (c) **RELIGIOUS BELIEF UNAFFECTED.**—Nothing in  
4 this Act shall be construed to authorize any government  
5 to burden any religious belief.

6 **SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.**

7 Nothing in this Act shall be construed to affect, inter-  
8 pret, or in any way address that portion of the First  
9 Amendment prohibiting laws respecting the establishment  
10 of religion.

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